

POARCH BAND OF CREEK INDIANS

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VIA EMAIL: reg.review@NIGC.gov Lael Echo-Hawk, Counselor to the Chair National Indian Gaming Commission 1441 L Street, NW, Suite 9100 Washington, DC 20005

Re: Comments to Draft Amendments to 25 CFR Part 559

Dear Commissioners:

On behalf of the Poarch Band of Creek Indians, I thank you for the opportunity to comment on the National Indian Gaming Commission's preliminary draft of amendments to 25 CFR Part 559 regarding facility licenses. We agree that each tribal gaming facility should be licensed, and we believe that the tribes should be able to decide for themselves what documentation and information is required for facility licensing. While we recognize and applaud that this draft of 25 CFR Part 559 minimizes the Commission's role in environmental and public health and safety issues, we believe that NIGC should leave all environmental and public health and safety issues to the authority and jurisdiction of the tribes. Accordingly, we recommend that 25 CFR Part 559 be repealed in its entirety.

If, however, 25 CFR Part 559 is not repealed in its entirety, we offer the following comments on the proposed draft:

A. Addition of Verification—Part 559.1(a)

The proposed draft of Part 559.1(a) states:

The purpose of this part is to ensure that each place, facility, or location where class II or III gaming will occur is located on Indian lands eligible for gaming and obtain verification that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety pursuant to the Indian Gaming Regulatory Act. (emphasis added)

The proposed draft of Part 559.4 requires:

A tribe shall submit to the Chair with each facility license an <u>attestation</u> certifying that by issuing the facility license: the tribe has determined that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and public health and safety. (emphasis added)

We suggest that a notice of delinquency shall be issued if the annual fee is not paid and/or the quarterly statement submitted within fifteen (15) calendar days of the due date. When the notice of delinquency is issued, the Chair shall also assess a late fee, which should be the lesser of a percentage of what is owed or a set fee. Another late fee shall be issued if payment is not made and/or the statement is not submitted within sixty (60) calendar days of the due date and ninety (90) calendar days of the due date. If the payment and/or the statement is over ninety-two (92) calendar days late, then the notice of violation shall issue. We would suggest a provision similar to Part 514.1(c)(11)(v) that allows the Chair to eliminate or adjust late fees based on the circumstances if the original annual fee is paid or the quarterly statement submitted. Late fees would be appealable under Part 577, but we would propose removing the word "[p]roposed" because late fees would be automatically applied.

1. Process in the Proposed Draft

If the Commission opts to continue under the process in the proposed draft of Part 514.1, we make the following recommendations:

a. More Specific Term Describing Notice—Part 514.1(c)(9)

Part 514.1(c)(9) refers to a "notice" to be issued in the event that the gaming operation fails to submit a fee payment or quarterly statement. We would suggest more particularly describing the "notice" so that it is not confused with a "notice of violation." We offer the term "notice of delinquency" as a suggestion.

b. Mandatory Notice of Delinquency and Time Frame—Part 514.1(c)(9)

We believe that the Chair should always issue a notice of delinquency if the fee is not paid and/or the statement is not submitted. Therefore, we suggest changing the "may" in Part 514.1(c)(9) to "shall". Furthermore, we believe that the notice should issue at a certain time (for example, 15 days after the failure to pay or submit the report).

c. Mandatory Assessment of Late Fee—Part 514.1(c)(11)

We would suggest that the "may" in Part 514.1(c)(11) be revised to "shall" so that the Chair must assess a late fee, subject to the Chair's ability to adjust that fee in Part 514.1(c)(11)(v) and an appeal under Part 577. Accordingly, the term "proposed" would need to be deleted from Part 514.1(c)(11)(v) and Part 514.1(c)(13).

d. Calculation of Late Fee—Part 514.1(c)(11)

The proposed draft regulation leaves the amount of the late fee blank. We have heard discussion about whether the late fee should be a percentage of what is owed or a set fee. We would propose that the late fee should either be the percentage of what is owed or a set fee, whichever is lesser.

I again thank you on behalf of the Poarch Band of Creek Indians for the opportunity to provide comment on the proposed changes to the fee regulation. We look forward to working with you as other proposed changes proceed.

Sincerely,

Stephanie A. Bryan

Vice-Chair

Poarch Band of Creek Indians

cc: Buford L. Rolin, Tribal Chairman

Daniel K. McGhee, Tribal Gaming Commission Administrator

Venus McGhee Prince, Tribal Attorney General

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